

§ 740.16 Additional permissive reexports (APR).

This License Exception allows the following reexports:

(a) *Reexports from Country Group A:1 and cooperating countries.* Reexports may be made from Country Group A:1 or from cooperating countries, provided that:

(1) The reexport is made in accordance with the conditions of an export authorization from the government of the reexporting country;

(2) The commodities being reexported are not controlled for NP, CB, MT, SI, or CC reasons; and

(3) The reexport is destined to *either*:

(i) A country in Country Group B *that is not also included in Country Group D:2, D:3, or D:4*; Cambodia; or Laos; and the commodity being reexported is both controlled for national security reasons and not controlled for export to Country Group A:1; or

(ii) A country in Country Group D:1 (National Security) (see Supplement No. 1 to part 740), other than Cambodia, Laos, or North Korea and the commodity being reexported is controlled for national security reasons.

(b) *Reexports to and among Country Group A:1 and cooperating countries.* Reexports may be made to and among Country Group A:1 and cooperating countries, provided that eligible commodities are for use or consumption within a Country Group A:1 (see Supplement No. 1 to part 740) or cooperating country, or for reexport from such country in accordance with other provisions of the EAR. All commodities except the following are eligible for reexport to and among Country Group A:1 and cooperating countries:

(1) Computers with a CTP greater than 45,000 MTOPS to Hong Kong and South Korea;

(2) Commodities controlled for nuclear nonproliferation or missile technology reasons.

(c) Reexports to a destination to which direct shipment from the United States is authorized under an unused outstanding license may be made under the terms of that license. Such reexports shall be recorded in the same manner as exports are recorded, regardless of whether the license is partially or wholly used for reexport pur-

poses. (See part 762 of the EAR for recordkeeping requirements.)

(d) Reexports of any item from Canada that, at the time of reexport, may be exported directly from the United States to the new country of destination under any License Exception.

(e) Reexports (return) to the United States of any item. If the reexporting party requests written authorization because the government of the country from which the reexport will take place requires formal U.S. Government approval, such authorization will generally be given.

(f) Reexports from a foreign destination to Canada of any item if the item could be exported to Canada without a license.

(g) Reexports between Switzerland and Liechtenstein.

(h) Shipments of foreign-made products that incorporate U.S.-origin components may be accompanied by U.S.-origin controlled spare parts, provided that they do not exceed 10 percent of the value of the foreign-made product, subject to the restrictions in § 734.4 of the EAR.

(i) Reexports to Sudan of items controlled by ECCNs 2A994; 3A992.a; 5A991.f; 5A992; 6A991; 6A998; 7A994; 8A992.d, .e, .f, and .g; 9A990.a and .b; and 9A991.d and .e. In addition, items in these ECCNs are not counted as controlled U.S. content for purposes of determining license requirements for U.S. parts, components, and materials incorporated in foreign-made products. However, the export from the United States to any destination with knowledge that they will be reexported directly or indirectly, in whole or in part to Sudan is prohibited without a license.

(j) Reexports of items controlled by NP Column 1 (see Supplement No. 1 to part 774 of the EAR) to, among, and from countries described in Country Group A:4 (see Supplement No. 1 to part 740), except:

(1) Reexports from countries that are not identified in Country Group A:1 of items that are controlled for NS reasons to destinations in Country Group D:1; and

(2) Reexports to destinations in Country Group E:2 and Country Group D:2.

[61 FR 12768, Mar. 25, 1996, Redesignated at 61 FR 64274, Dec. 4, 1996, Redesignated at 61 FR 68579, Dec. 30, 1996, and amended at 62 FR 25458, May 9, 1997; 63 FR 42228, Aug. 7, 1998; 65 FR 38150, June 19, 2000; 65 FR 60855, Oct. 13, 2000]

§ 740.17 Encryption commodities and software (ENC).

License Exception ENC authorizes the export and reexport of encryption items classified under ECCNs 5A002, 5D002 and 5E002. No encryption item(s) may be exported under this license exception to Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria. Reporting requirements apply to exports made under the authority of License Exception ENC; see paragraph (e) of this section for these requirements.

(a) *Exports and reexports of encryption items.* Exports and reexports of encryption items classified under ECCNs 5A002, 5D002 and 5E002 are authorized to any end-user located in the countries listed in Supplement 3 to this part 740, except for exports of cryptanalytic items (as defined in Part 772 of the EAR) to government end-users. These items may also be exported or reexported to any destination for the internal use of foreign subsidiaries or offices of firms, organizations and governments headquartered in Canada or in countries listed in Supplement 3 to this part 740.

(b) For all other countries, you may export and reexport encryption commodities, software and components (as defined in part 772 of the EAR) under the provisions of License Exception ENC as enumerated in this section. For exports and reexports of encryption items which contain an open cryptographic interface (as defined in part 772 of the EAR), see paragraph (b)(5) of this section.

(1) *Encryption items for U.S. subsidiaries.* Exports and reexports of any encryption item classified under ECCNs 5A002, 5D002 and 5E002 of any key length are authorized to foreign subsidiaries of U.S. companies (as defined in part 772 of the EAR) without review and classification. This includes source code and technology for internal

company use, such as the development of new products. License Exception ENC also authorizes transfers by U.S. companies of encryption technology controlled under 5E002 to foreign nationals in the United States, (except nationals of Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria) for internal company use, including the development of new products. All items produced or developed by U.S. subsidiaries with encryption commodities, software and technology exported under this paragraph are subject to the EAR and require review and classification before any sale or retransfer outside of the U.S. company.

(2) *Encryption commodities and software.* (i) Exports and reexports of any encryption commodity, general purpose toolkit, software and component are authorized after review and classification by BXA under ECCNs 5A002 and 5D002 to any individual, commercial firm or other non-government end-user outside the countries (except Cuba, Iraq, Iran, Libya, North Korea, Sudan or Syria) listed in Supplement 3 to this part 740. Encryption products classified under this paragraph require a license before export and reexport to governments (as defined in part 772 of the EAR) outside the countries listed in Supplement 3 to this part 740. The restriction limiting exports or reexports to internal company proprietary use is removed.

(ii) Certain restrictions apply to Internet and telecommunications service providers. Internet and telecommunications service providers can obtain and use any encryption product for their internal use and to provide any service under License Exception ENC. However, a license is required for the use of any product not classified as retail to provide services specific to government end-users outside the countries listed in Supplement 3 to this part 740, e.g., WAN, LAN, VPN, voice and dedicated-link services; application specific and e-commerce services and PKI encryption services specifically for government end-users.

(3) *Retail encryption commodities and software.* Exports and reexports to any end-user of encryption commodities, software and components are authorized after review and classification by